

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER: 05-0129**  
**Sales and Withholding Tax**  
**Responsible Officer**  
**For the Tax Period 1989-1992**

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**ISSUE**

**1. Sales and Withholding Tax-Responsible Officer Liability**

**Authority:** IC 6-8.1-5-1(b), IC 6-3-4-8(g), IC 6-2.5-9-3.

The taxpayer protests the assessment of responsible officer liability for unpaid corporate withholding taxes.

**STATEMENT OF FACTS**

The taxpayer was the manager of a corporation that operated a restaurant and failed to pay its sales and withholding taxes during the tax period 1989-1992. The Indiana Department of Revenue assessed the unpaid sales taxes, withholding taxes, interest, and penalty against the taxpayer as a responsible officer of that corporation. The taxpayer protested the assessment of tax and a hearing was held.

**1. Sales and Withholding Tax-Responsible Officer Liability**

**Discussion**

Indiana Department of Revenue assessments are prima facie evidence that the taxes are owed by the taxpayer, who has the burden of proving that the assessment is incorrect. IC 6-8-1-5-1(b).

The proposed withholding taxes were assessed against the taxpayer pursuant to IC 6-3-4-8(g), which provides in relevant part that "In the case of a corporate or partnership employer, every officer, employee, or member of such employer, who, as such officer, employee, or member is under a duty to deduct and remit such taxes shall be personally liable for such taxes, penalties, and interest."

The proposed sales tax liability was issued under authority of IC 6-2.5-9-3 that provides as follows:

An individual who:

- (1) is an individual retail merchant or is an employee, officer, or member of a corporate or partnership retail merchant; and
- (2) has a duty to remit state gross retail or use taxes to the department;

holds those taxes in trust for the state and is personally liable for the payment of those taxes, plus any penalties and interest attributable to those taxes, to the state.

The taxpayer was the manager of the restaurant. As the manager, the taxpayer is presumed to have been in a position to exercise control over the fiscal aspects of the restaurant. He argues, however, that in reality he had no control over the finances and did not determine which creditors would be paid. Since he did not produce any documentation to substantiate this claim, he failed to sustain his burden of proving that he did not have a duty to deduct and remit corporate sales and withholding taxes to the state.

Alternatively, the taxpayer argues that the amount of the assessed taxes for the corporation was too high. Although he was given ample opportunity to do so, he failed to produce any documentation to substantiate this claim. He failed to sustain his burden of proving that the amount of trust taxes assessed was incorrect.

### **Finding**

The taxpayer's protest is denied.